

TITLE 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 7. Capital Access Program for Small Businesses

§8072. Loan Enrollment.

- (a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.
- (b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:
- (1) by notifying the Authority in writing, within 10 days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is ~~the earlier of the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower, or the date on which the loan documents have been executed and the Participating Financial Institution has obligated itself to disburse proceeds of the loan;~~ and
 - (2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower, or from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.
- (c) The notification to the Authority shall include at least the following information:
- (1) Name, D/B/A (if any), address, telephone and fax number of the Borrower.
 - (2) Brief description of the Borrower's business and either the SIC Code(s) or the NAIC Code(s) applicable to such business.
 - (3) Brief description of the Borrower's regular activities and the amount of its annual revenues.
 - (4) Brief summary of the intended use of the proceeds of the Qualified Loan.
 - (5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled).
 - (6) Type of the Qualified Loan (e.g., line of credit, term loan, equipment loan).
 - (7) Date of the Qualified Loan.
 - (8) Interest rate applicable to the Qualified Loan.
 - (9) Term of the Qualified Loan.
 - (10) Geographic location of the Qualified Business and the location of the facilities being financed if different.
 - (11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.
 - (12) Whether the loan is secured.
 - (13) Whether the loan is a refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing.
 - (14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.
 - (15) Whether any portion of the Fees payable by the Borrower or the Matching Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Matching Contribution in connection with the Qualified Loan.
 - (16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.
 - (17) Certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
 - (18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.
 - (19) Certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
 - (20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Matching Contribution.

(21) Certification that the aggregate principal amount of the loan, together with all other Qualified Loans made by the Participating Financial Institution to the Borrower over the last three years (including all related entities among which a common enterprise exists), does not exceed \$2,500,000.

(22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid from loan proceeds.

(23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to safety and soundness standards as set forth in applicable federal banking regulations.

The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17) and (18) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.

(e) The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating Financial Institution in advance of the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.

(f) Upon enrollment of a Qualified Loan, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.

(g) The Participating Financial Institution shall notify the Authority within 60 days after any extension or renewal of any enrolled loan which does not increase the loan amount. ~~If the Participating Financial Institution fails to notify the Authority within such 60 day period, the loan shall be terminated from the Program.~~ If the amount is increased, a new loan enrollment form shall be submitted within such time, and Fees shall be transmitted or deposited pursuant to Section 8072 (b)(2) based on the increased amount.

(h) The Participating Financial Institution shall notify the Authority of the work-out status on Qualified Loans for which extension/renewal or charge off status is not yet clear. The "Notification of Work-Out Status" form provided by the Authority shall be used to notify the Authority. The Participating Financial Institution shall have up to 240 days from such initial notification to inform the Authority of re-enrollment or charge off.

NOTE: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.2 and 44559.4, Division 27, Health and Safety Code.

HISTORY

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by Health and Safety Code section 44520(b). A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 3-21-94 order including amendment of subsection (c)(20), new subsections (g) and (h) and amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).

3. Amendment of subsections (b)(1), (b)(2) and (c)(2), new subsections (c)(3) and (c)(4) and subsection renumbering, amendment of newly designated subsection (c)(6), new subsections (c)(8) and (c)(9), amendment of newly designated subsections (c)(11) and (c)(14), new subsection (c)(15), amendment of newly designated subsections (c)(16), (c)(17), (c)(19) and (c)(22), amendment of subsections (d) and (e), new subsection (f) and subsection relettering, and amendment of newly designated subsections (g) and (h) filed 2-6-96 as an emergency pursuant to Health and Safety Code section 44520(b); operative 2-6-96 (Register 96, No. 6). Pursuant to Health and Safety Code section 44520(b), a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 2-6-96 order, including amendment of subsections (c)(4), (c)(15), (c)(17) and (c)(22), and new subsections (c)(23)-(24), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (a), (b)(2), (c)(2), (c)(3), (c)(15), (c)(19), (c)(22), (d), (e), (h) and (i) filed 12-23-98; operative 12-23-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).
6. Amendment of subsections (c)(1)-(3), (c)(19) and (c)(21) filed 2-24-2000 as an emergency pursuant to Health and Safety Code section 44520; operative 2-24-2000 (Register 2000, No. 8). A Certificate of Compliance must be transmitted to OAL by 8-22-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-24-2000 order transmitted to OAL 8-21-2000 and filed 10-2-2000 (Register 2000, No. 40).
8. Repealer of subsection (c)(19), subsection renumbering, amendment of newly designated subsection (c)(23) and subsection (d), repealer of subsection (f), subsection relettering and amendment of Note filed 12-18-2000 as an emergency pursuant to Health and Safety Code section 44520; operative 1-1-2001 (Register 2000, No. 51). A Certificate of Compliance must be transmitted to OAL by 7-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12-18-2000 order transmitted to OAL 6-14-2001 and filed 7-26-2001 (Register 2001, No. 30).

§8074. Claim for Reimbursement.

- (a) A Participating Financial Institution shall notify the Authority within 30 days after it has charged off all or part of a Qualified Loan as a result of a default by the Borrower.
- (b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 30 days.
- (c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid.
- (d) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:
 - (1) Name and number of the Participating Financial Institution.
 - (2) Name, address and telephone number of contact person.
 - (3) Name of the business receiving the defaulted Qualified Loan.
 - (4) Amount and date of the Qualified Loan and the Authority's loan number.
 - (5) Date of default.
 - (6) Amount of default.
 - (7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.
 - (8) Certification that notice was filed with the Authority as required by Section 8074 (a) above within 30 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.
 - (9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.
 - (10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.
 - (11) Statement whether the Qualified Loan qualifies under Section 8074 (f).
 - (12) Certification that the Participating Financial Institution has given notice to the Authority of the initial enrollment of the loan and certification that either (A) the Participating Financial Institution has given notice to the Authority of any renewals or extensions of the loan, or (B) the loan was continuously renewed or extended within the Participating Financial Institution since the date of its initial enrollment.

(e) Except as provided in Section 8074 (f) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(f) If a Qualified Loan (or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(g) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

NOTE: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.5, Division 27, Health and Safety Code.

HISTORY

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by Health and Safety Code section 44520(b). A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsections (a), (b), (e)(8), (h) and Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (a)-(c), repealer of former subsection (d) and subsection relettering, amendment of newly designated subsection (d)(8), new subsection (e) and subsection relettering, amendment of newly designated subsection (f), repealer of subsection (g) and relettering, and amendment of newly designated subsection (g) filed 2-6-96 as an emergency pursuant to Health and Safety Code section 44520(b); operative 2-6-96 (Register 96, No. 6). Pursuant to Health and Safety Code section 44520(b), a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order, including amendment of subsection (c), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (a), (c) and (d)(4) filed 12-23-98; operative 12-23-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 52).